

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
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Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)
)

CC Docket No. 96-98

Interconnection between Local Exchange)
Carriers and Commercial Mobile Radio)
Service Providers)
)
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)

CC Docket No. 95-185

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REPLY OF THE LOCAL EXCHANGE CARRIER COALITION TO OPPOSITIONS

The Local Exchange Carrier Coalition

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SUMMARY

The Local Exchange Carrier Coalition ("LECC") respectfully replies to oppositions to its petition for reconsideration and clarification of the First Order in this proceeding. The oppositions do nothing to alter the need, demonstrated in the LECC petition, for reconsideration or clarification of many aspects of the First Order. Adoption of the changes proposed in the LECC petition will prevent the Commission's rules from subjecting incumbent LECs to major competitive disadvantages and substantial unnecessary regulatory burdens. Such changes will ensure that the Commission's rules satisfy the terms of the 1996 Act while honoring its purpose of promoting competition and deregulation.

Thus, LECs should not be required to offer customer-specific contract or trial offerings at wholesale rates to resellers. Contrary to the claims of opponents, such a requirement is not mandated by the 1996 Act and would reduce the benefits to customers of competitive provision of such offerings.

The implementation date for electronic access to operations support systems should be deferred to January 1, 1998. Such a limited deferral would recognize the current state of the industry standards process while avoiding a requirement that incumbent LECs install costly and inefficient manual access, or other interim electronic access arrangements.

Contrary to opponents' claims, collocation is infeasible at LECs' vaults and in other small spaces. Virtual collocation should be limited to being a substitute for physical collocation, consistent with the 1996 Act. Collocating carriers should not be permitted to use subcontractors for work related to physical collocation outside the collocation cage on incumbent LECs' premises.

The temporary transitional access charge mechanism should remain in place until access charge reform is implemented. The Commission correctly analyzed the need for, and statutory basis of, such a mechanism. However, for the temporary mechanism to be effective, it should not end until access charge reform is implemented.

The Commission should alter the First Order's treatment of "symmetrical pricing" based on tandem rates. Under the current rule, requesting carriers will receive compensation for functions they do not perform. Similarly, the Commission should reject the claims of WorldCom and not interpret its treatment of shared transmission facilities to permit requesting carriers to avoid access charges, resale rules, or the use of unbundled elements.

As requested in LECC's petition, the First Order's regulations for compensation between LECs and commercial mobile radio service ("CMRS") providers should be modified to avoid an overly broad definition of calling areas for CMRS providers, which distorts competition. Despite the claims of paging interests, the First Order's compensation arrangements for paging providers do not properly reflect paging traffic flows and should be changed.

Additional guidelines for interconnecting carriers, including a requirement that such carriers provide demand forecasts to incumbent LECs, are needed to promote competition by avoiding the introduction of major inefficiencies into the interconnection process. In opposing LECC's request for modification of the interval within which LECs must switch customers for local service, parties seek only to gain competitive advantages over incumbent LECs.

With respect to resale issues, LECC urges that "avoided costs" should not be increased to include an allocation of shared costs. Similarly, profits or mark-ups on resold services should not be considered to be attributable to costs that will be avoided.

There is no statutory or policy basis for directory assistance services and operator services to be considered "network elements" under Section 251(c) of the 1996 Act. Similarly, unbundling of the SMS/800 database is unnecessary. Requesting carriers also should be required to inform incumbent LECs if advanced loop technologies are to be deployed on analog loops. Implementation of the First Order's branding and customized routing requirements is technically infeasible for LECC members.

Opponents fail to provide any justification for the current requirement that incumbent LECs must exercise eminent domain rights on behalf of other carriers. That requirement is both unnecessary and may conflict with state eminent domain laws.

Finally, opponents fail to offer any credible reasons why the Commission should avoid clarifying that interconnection requests do not require incumbent LECs to alter their fundamental network technologies.

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REPLY OF THE LOCAL EXCHANGE CARRIER COALITION TO OPPOSITIONS

I. INTRODUCTION

The Local Exchange Carrier Coalition ("LECC") respectfully replies to oppositions filed on October 31, 1996 against its petition for reconsideration and clarification (the "petition" or "LECC petition") of the Commission's First Report and Order (the "First Order") in the above-captioned proceeding.^{1/} Contrary to the oppositions, LECC's proposals to modify and clarify the First Order are reasonable and practical solutions to

^{1/} See Petition of Local Exchange Carrier Coalition for Reconsideration and Clarification (filed Sept. 30, 1996) of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325 (rel. Aug. 8, 1996). LECC consists of incumbent local exchange carriers ("LECs") that provide telecommunications services to residential and business customers in rural, urban, and suburban areas throughout the United States. The members of LECC were listed in Attachment A to the LECC petition.

issues involving implementation of local exchange competition, and should be adopted.

These changes are consistent with, and in some cases required by, the Telecommunications Act of 1996 (the "1996 Act").^{2/} The requested changes are especially important because incumbent LECs, as carriers of last resort, have the responsibility of providing local telephone service to virtually all residential and business users in the United States.

II. OPPONENTS' CLAIMS AGAINST THE LECC PETITION ARE UNFOUNDED

A. LECs Should Not Be Required To Offer Customer-Specific

Contracts At Wholesale Rates to Resellers. Several parties urge the Commission to ignore the reasoning of LECC and others that customer-specific contracts are not services that must be offered at wholesale to resellers.^{3/} These parties insist that the 1996 Act does not permit an exemption from the wholesale requirement for customer-specific contracts.^{4/}

However, Section 252(d)(3) bases calculation of wholesale rates on the retail rates of incumbent LEC services.^{5/} The Commission has held that the undefined term "retail rate"

^{2/} Pub. L. No. 104-104, 110 Stat. 56 (1996), to be codified at 47 USC §§ 151 et seq.

^{3/} See MCI Opposition at 29; Sprint Opposition at 19; WorldCom Opposition at 24. While parties style their pleadings in various ways, LECC refers to them as "oppositions" for convenience. For a list of parties cited and short forms of their names used herein, see Attachment 1 to this Reply.

^{4/} See, e.g., GCI Opposition at 8; TRA Opposition at 14-15. They also claim that the Commission has already addressed the issue, rendering LECC's and other parties' requests for reconsideration "redundant." TRA Opposition at 13. These claims are wrong. While the Commission has held that Section 251(c)(4) makes no exception for promotional or discounted offerings, "including contract and other customer-specific offerings," First Order at para. 948, its analysis discussed in detail only promotions and volume-discount offerings, see First Order at paras. 948-953. The Commission declined to consider specifically the issues now raised by LECC and others in the petitions to this proceeding.

^{5/} 47 U.S.C. § 252(d)(3).

should be "interpreted in light of the pro-competitive policies underlying the 1996 Act."^{6/} A finding that customer-specific contract offerings are not offered at retail rates would advance those policies as well. Customer-specific contracts are the product of competitive negotiations that occur on a case-by-case basis. Far from benefitting competition, imposition of a "wholesale" requirement on customer-specific contract services would stifle incumbent LECs' incentives to participate aggressively in providing such services. This would reduce consumer choice and ultimately harm competition. In addition, the 1996 Act allows reasonable restrictions on the resale of services.^{7/} Because customer-specific contract offerings do not include many of the costs normally reflected in retail rates that would be avoided in wholesale rates, it would not be reasonable to require an incumbent LEC to supply its competitors with these offerings at "wholesale" prices.

B. The January 1, 1997 Implementation Deadline For Access To Operations Support Systems Must Be Deferred. Some parties argue that the First Order's January 1, 1997 deadline for the provision by incumbent LECs of full electronic access to Operations Support Systems ("OSS") should not be deferred or extended.^{8/} MCI urges retention of the existing deadline in order to "give new entrants sufficient leverage to force progress in standards-setting activities."^{9/} CompTel claims that it and others must have "sufficient

^{6/} First Order at para. 949 (referring to the rates for short-term promotional offerings).

^{7/} See 47 U.S.C. § 251(c)(4)(B).

^{8/} See, e.g., MCI Opposition at 21; CompTel Opposition at 4.

^{9/} MCI Opposition at 21.

information to monitor the [incumbent] LECs' behavior."^{10/} The Commission should ignore these baseless arguments and extend the deadline as discussed in LECC's petition.^{11/}

LECC has demonstrated that deferral of the deadline by at least one year is justified by the First Order's own findings regarding the as-of-yet incomplete standard-setting process. LECC thus asks the Commission to adopt a more realistic deadline that acknowledges the current progress of industry standard-setting groups.^{12/} LECC has also alerted the Commission to the waste and inefficiencies that would be incurred by LECs in attempting to comply with the January 1, 1997 deadline without the benefit of complete industry standards. Contrary to the assertions of MCI and others, the LECs have no incentive to delay the standard-setting process. In fact, the LECs will benefit from its completion, to the extent that they can avoid expensive manual access arrangements or interim electronic solutions. Indeed, the inefficient use of resources that will occur under the January 1, 1997 deadline will harm all involved, including the consumer.

C. Mandatory Collocation Requirements For Vaults And Other Small Spaces Are Unreasonable. Some parties oppose LECC's request to remove "vaults, huts, and other small spaces" (collectively "vaults") from the definition of "premises."^{13/} These parties claim that because the First Order held that "LECs are not required to physically collocate equipment in locations where not practical for technical reasons or because of space

^{10/} CompTel Opposition at 4-5.

^{11/} See LECC Petition at 4-5. Sprint, while disagreeing with LECC on several points, agrees that "the January 1, 1997 deadline is not feasible." Sprint Opposition at 7.

^{12/} See LECC Petition at 4-5.

^{13/} See, e.g., MFS Opposition at 5; GCI Opposition at 7; MCI Opposition at 21.

limitations,"^{14/} LECC is either asking for something it does not need, or making the request "solely to impede competition."^{15/} In fact, it is the First Order's expansive definition of "premises" that is unnecessary.

As LECC has explained, vaults are almost invariably too small to accommodate physical collocation equipment.^{16/} It is unreasonable to impose upon incumbent LECS a requirement to demonstrate and redemonstrate this fact on a case-by-case basis. Opponents of LECC's request seek to impede competition by burdening the LECs with an unnecessary requirement. Thus, the current expansive definition of "premises" should be reconsidered.

D. Virtual Collocation Should be Required Only As A Limited Substitute For Physical Collocation. Some parties oppose LECC's request that virtual collocation, as set forth in the 1996 Act, be treated as a limited substitute for physical collocation.^{17/} MCI and MFS propose an incorrect reading of Sections 251(c)(2) and (3), essentially claiming that virtual collocation is broadly mandated because it is interconnection at a "point" different from physical collocation.^{18/} These parties ignore the basic rule of statutory construction that specific terms govern over general ones. As described in the LECC petition, Section 251(c)(6) specifically treats virtual collocation as a limited exception, to be available when a LEC demonstrates to a state commission that physical collocation is not practical. This is the only role for virtual collocation contemplated in the statute.

^{14/} First Order at para. 575.

^{15/} GCI Opposition at 7.

^{16/} See LECC Petition at 6.

^{17/} See MCI Opposition at 22, MFS Opposition at 6-7, citing LECC Petition at 8-9.

^{18/} See MFS Petition at 6-7.

E. The Subcontracting Requirements For Collocation Should Be Clarified.

ALTS opposes LECC's request that any work associated with collocation on the LEC's premises outside the physical collocation space (the "cage") should not be subject to the right of a collocator to subcontract the installation of its equipment.^{19/}

ALTS' opposition is baseless. By definition, the cage defines the physical space within which collocators' equipment will be located. Thus, the only need for subcontracting by a collocator will be for activities within the cage. Although it may be necessary to make changes to incumbent LEC equipment or facilities outside the cage associated with physical collocation, the incumbent LEC should be responsible for performing such changes as part of its ongoing responsibilities to maintain the quality and reliability of its network. Of course, only LEC personnel should perform the work associated with virtual collocation.

F. The Temporary Transitional Access Charge Mechanism Should Remain In Place Until Access Reform Is Implemented. LECC asks that the First Order's transition framework for access charges remain in effect until reforms are actually implemented.^{20/} Some parties object to this reasonable request, citing mere "possibilities" that access reform will be completed and implemented by June 30, 1997.^{21/} Others claim that LECC wishes to delay reforms or seeks a putative "windfall."^{22/} These arguments are unfounded

^{19/} See ALTS Opposition at 23-24, citing LECC Petition at 31-32.

^{20/} See LECC Petition at 12-13.

^{21/} See, e.g., MCI Opposition at 24 ("It is highly unlikely" that the transitional mechanism will expire before access reform is completed).

^{22/} See WorldCom Opposition at 11-12; CompTel Opposition at 8-9. These claims of a "windfall" are particularly hollow because the First Order's framework initiates far-reaching changes in incumbent LECs' compensation arrangements. Opponents apparently are seeking to choke off legitimate revenues of incumbent LECs to cripple competition.

speculation. Regulatory actions affecting significant revenue flows for recoupment of current networks' costs should not rest on such allegations.

The Commission should reject other claims that the 1996 Act does not provide for a transition regime pending access charge reform.^{23/} As the Commission found, a temporary transition regime is fully compatible with the 1996 Act. But such a transition plan must be workable as well. The extension requested by LECC is necessary to ensure that the temporary plan will not dissolve before the transition to a new access regime is complete. LECC supports the Commission's efforts to complete access charge reform by June 30, 1997.^{24/} In doing so, however, LECC counsels prudence. The Commission can achieve both its goal of reform and the orderly operation of markets by linking the First Order's transition period for access charges with implementation of the Commission's reforms. Such linkage is in the public interest because it will provide a predictable and stable environment for new entrants while ensuring that incumbent LECs will receive adequate compensation for costs incurred. Access reform may certainly be completed in the time anticipated by the Commission. As noted, however, a new access structure could take months to implement.^{25/} An arbitrary date without linkage poses the risk of massive -- and

^{23/} CompTel has filed a petition for review in the Eighth Circuit challenging the Commission's authority to implement the transition plan. See CompTel Opposition at 8.

^{24/} The Commission should also disregard claims that the First Order's transition regime for access charge reform is contrary to Competitive Telecommunications Association v. FCC, 87 F.3d 522 (D.C. Cir. 1996). See WorldCom Opposition at 12; Comptel Opposition at 9. The Commission's transition plan is wholly unrelated to the history of TIC, the matter before the CompTel Court.

^{25/} LECC Petition at 13.

unrecoverable -- dislocation of incumbent LECs' revenue flow, harming their ability to serve the public.

G. The First Order Misapplies Symmetrical Pricing Based On Tandem Rates.

Several parties^{26/} oppose LECC's request that the Commission modify Section 51.711(a)(3) so that incumbent LECs pay interconnectors the rate for tandem interconnection only where interconnectors actually have both tandem and end office switches.^{27/}

The opponents of LECC's request ignore the cost-based pricing principles on which the 1996 Act is founded. As other parties note,^{28/} under Section 252(d)(2), state commissions must "provide for the mutual and reciprocal recovery by *each* carrier of costs associated with transport and termination on *each* carrier's network facilities...."^{29/} Accordingly, interconnecting carriers should receive compensation only for costs they incur.

If interconnecting carriers do not provide tandem switching and associated transport, they should not be compensated as if they do. Such compensation is not "reciprocal," but instead would be a subsidy. As Sprint observes, it is unfair to incumbent LECs to have them pay other carriers for two switching functions when switching occurs once, and for transport

^{26/} See AT&T Opposition at 23-24; ALTS Opposition at 12-13; Comcast/Vanguard Opposition at 11; Cox Opposition at 3; MCI Opposition at 32-33; MFS Opposition at 8-9; NCTA Opposition at 16-18; Sprint Spectrum Opposition at 6; Teleport Opposition at 5-8; US One Opposition at 10-11, citing generally LECC Petition at 14-15; Sprint Petition at 12-13.

^{27/} See LEC Petition at 14-15. The rule section at issue is one of those now subject to the partial stay imposed by the U.S. Court of Appeals for the Eighth Circuit. See also Iowa Utilities Board v. FCC, No. 96-3321, slip op. (8th Cir. Oct. 15, 1996) ("Stay Order").

^{28/} See, e.g., Ameritech Opposition at 30-32.

^{29/} See 47 USC §252(d)(2) (emphasis added).

where such transport does not exist.^{30/} MCI argues that interconnecting carriers' architectures likely will emphasize fiber rings and loops, and that the current rule provides an appropriate proxy for costs associated with these new architectures.^{31/} However, it is not apparent that the architectures described by MCI include a tandem switching function at all. The current rule, if left unchanged, will encourage deployment of network designs that will exploit this subsidy, not increase efficiency.

H. The Treatment Of Shared Transmission Facilities Must Not Subvert Existing Transport Arrangements. WorldCom opposes LECC's request that shared transmission facilities be purchased in conjunction with local and tandem switching capability, arguing, among other things, that incumbent LECs must provide a "usage option" for requesting carriers to obtain transport between incumbent LEC end offices on a network element basis.^{32/} LECC's request was an attempt to address a definitional issue in the First Order: the meaning of "shared transport." In seeking a usage option associated with shared transport, WorldCom continues its attempts to evade access charges, resale, and the use of true unbundled elements, by having the Commission redefine as network elements the common transport portions of switched access service. Transport between end offices is already available as a dedicated, unbundled network element. Usage-based local exchange transport is available under resale agreements. Switched access also remains for termination of interstate traffic. The Commission should not require incumbent LECs to bundle

^{30/} See Sprint Opposition at 21-22.

^{31/} See MCI Opposition at 33.

^{32/} See WorldCom Opposition at 3-6; see also WorldCom Petition at 1-2.

otherwise unbundled elements into a usage-based "shared" transport element in order to permit evasion of the use of these other offerings.

LECC agrees with Ameritech and others that WorldCom's petition should be denied, for the reasons stated in those oppositions.^{33/} LECC's proposal regarding shared transport, if adopted, should be implemented to prevent requesting carriers from evading access charges and other compensation arrangements for transport through usage-based charges for "shared" transport. In this regard, LECC notes that Ameritech, in its opposition, proposes an alternative formulation of "shared transport" and an associated price structure for cost recovery that address LECC's concerns while preventing the abuses supported by WorldCom.^{34/}

I. The Commission Should Reject A Broad Definition Of Calling Areas For CMRS Providers. The Commission should modify its holding that all calls by commercial mobile radio service ("CMRS") providers within the same Major Trading Area ("MTA") should be deemed local calls.^{35/} The First Order now creates an improper and artificial regulatory advantage for CMRS providers. A result of this regime is that incumbent LECs will be forced to charge higher prices to landline customers than to CMRS customers. There is no basis in the 1996 Act for such disparate treatment. Instead, the Commission should use existing calling areas established for CMRS and wireline providers.

^{33/} See, e.g., Ameritech Opposition at 6-11; USTA Opposition at 16-17.

^{34/} See Ameritech Opposition at 9-10 and n. 12.

^{35/} Order at para. 1036.

Contrary to assertions by CMRS providers, technology by itself does not mandate an MTA-based approach.^{36/} Such arguments mask attempts to maintain an asymmetrical regulatory advantage for the wireless industry.^{37/} CMRS providers simply wish to avoid paying access charges for calls that, according to their network architectures, would be defined as local.^{38/}

Particularly egregious are claims that use of a local calling area would result in improper compensation for LECs.^{39/} Under reciprocal compensation principles, a CMRS provider would receive the appropriate transport and termination charges for the traffic exchanged with the landline network.^{40/} LECC merely asks that CMRS providers pay for what they use.

J. The Commission Should Reject Paging Companies' Efforts To Seek Competitive Advantages. The Commission should reject efforts by paging companies to gain

^{36/} See, e.g., CTIA Opposition at 7-8; AT&T Opposition at 41-42; AirTouch Opposition at 13-14.

^{37/} See Comcast/Vanguard Opposition at 4-5 (revealing that the MTA-based cost advantage for CMRS providers "is vital for the growth of the industry"). The 1996 Act, however, did not provide for industrial policy favoring one industry over another "to promote its growth." Instead, Congress directed that markets, prices, and neutral competition should determine the fate of individual providers and industries.

^{38/} See, e.g., AT&T Opposition at 41-42; AirTouch Opposition at 13-14 (noting the desire to maintain lower prices for wireless customers by maintaining the price disparity); Comcast/Vanguard Opposition at 4-5. Equally unconvincing are claims that the Commission must use MTA boundaries because licenses were awarded on an MTA basis. See, e.g., Arch Opposition at 4; AT&T Opposition at 41.

^{39/} Comcast/Vanguard Opposition at 4-5.

^{40/} In answer to this, opponents claim that somehow LECs will "evade" paying reciprocal compensation. Comcast/Vanguard Opposition at 5.

favorable treatment under the guise of reciprocal compensation principles.^{41/} The Commission thus should further reconsider its decision that paging companies are entitled to reciprocal compensation under Section 251(b)(5).^{42/} LECC agrees with both NYNEX and Kalida Telephone Company^{43/} that paging providers are seeking to make LECs pay for the paging providers' use of incumbent LECs' networks.^{44/} In other words, paging providers want LECs' customers to subsidize them. Reciprocal pricing principles as defined in the First Order should not apply in this context.^{45/}

K. The Commission Should Adopt Additional Guidelines For Interconnectors. Including Demand Forecasts. Some parties oppose LECC's proposal that the Commission provide additional guidelines for interconnecting carriers to thwart frivolous or speculative

^{41/} See, e.g., PageNet Opposition at 2-22 (offering an exegesis on paging that is wholly irrelevant to the Commission's sound analysis in the First Order); Arch Opposition at 2-3 (same).

^{42/} Order at para. 1008. The Commission has correctly determined that paging companies do not provide telephone exchange service as defined under the 1996 Act. Id.; see also Ameritech Opposition at 40 (noting that a paging network's architecture does not perform "termination" functions remotely comparable to the routing, physical switching, and facilities-based call completion functions of two-way voice services); USTA Opposition at 34-35.

^{43/} See NYNEX Opposition at 30-31; Kalida Petition at 2-4.

^{44/} See PageNet Opposition at 3-6; Arch Opposition at 2-4. See also Ameritech Opposition at 39 (noting that paging providers have not provided meaningful facts for the record to support their claims); U S West Opposition at 18-19 (noting that in no way do paging companies provide local exchange service).

^{45/} To the extent that paging providers incur some de minimis cost for connecting their one-way traffic to their networks, the costs are comparatively minor and should be factored into the business model for their service offering rather than placed on LECs and their customers.

interconnection requests.^{46/} The proposed guidelines include permitting the use of term commitments, termination liability provisions, and demand forecasts. Opponents argue that the guidelines proposed by LECC would somehow constitute unfair or anticompetitive barriers to entry. NCTA claims that because frivolous requests are already deterred by the requirement that requesting carriers negotiate in good faith, further guidelines are unnecessary.^{47/}

The guidelines proposed by LECC are a reasonable and focused means to prevent speculative or frivolous interconnection requests. Despite the presence of a "good faith negotiation" requirement, further guidelines are necessary to add content to this general obligation for requesting carriers. Guidelines are especially needed because of the substantial costs and risks that incumbent LECs must bear under the 1996 Act's interconnection requirements. LECC specified that term commitments for a "reasonable" time should be required after price is determined. This is consistent with the Commission's decision not to permit such commitments before such critical terms have been resolved.^{48/} The termination liability provisions requested are consistent with those that have been used for years in Special Construction tariffs to ensure that the cost-causer pays its costs. Demand forecasts are essential for incumbent LECs to engineer their networks adequately to provide the necessary capacity to each requesting carrier. Interconnection arrangements that either over-

^{46/} See ALTS Petition at 33; MCI Petition at 8-9; NCTA Petition at 8-12; citing LECC Petition at 19-20.

^{47/} See NCTA Opposition at 10 n. 30. Although ALTS and MCI claim that there is no evidence of such frivolous requests, the requested guidelines are needed to avoid "regulatory gaming" by requesting carriers as implementation of the 1996 Act proceeds.

^{48/} See First Order at para. 156.

or under-utilize the requested elements can adversely affect the operations of requesting carriers, as well as the incumbent LEC itself. Thus, the absence of guidelines will harm both the financial health of incumbent LECs and interconnection for new entrants, in turn impeding the development of competition intended by the 1996 Act.

L. The Interval In Which LECs Must Switch Over Customers For Local Service Should Be Altered. Some parties urge the Commission to retain its finding in the First Order that incumbent LECs must "switch over" customers for local service in the same interval as they currently switch users between presubscribed interexchange carriers ("PICs").^{49/} These parties argue that by requesting reconsideration of this point, LECC intends to harm competition by delaying compliance with requests to switch over customers to competing carriers.^{50/} This reasoning is unsound as a matter of policy.

In fact, LECC has asked the Commission to require that switchovers be made at the same interval that incumbent LECs process their own local service orders. As a result, incumbent LECs will have no incentive to delay the switchover requests of others. Indeed, increased competition for local services will enhance incumbent LECs' motivation to provide fast and efficient service to their own customers. Thus, requesting carriers will benefit from incumbent LECs' incentives to keep their own customers satisfied.

MCI and NCTA also argue that LECC's request should be disregarded because the First Order imposes the interval requirement only for "software changes" and because

^{49/} See, e.g., MCI Opposition at 19; NCTA Opposition at 12.

^{50/} See NCTA Opposition at 12; MCI Opposition at 20.

switchovers requiring physical modification of the network are governed by other rules.^{51/}

Neither party provides any reasons, however, why incumbent LECs should be subject to the arbitrary and inaccurate analogy of PIC change intervals. Indeed, as LECC explained in its petition, even if a switchover involves only software changes, it may require re-programming that is far more involved and time-consuming than the PIC change process, particularly for small LECs that may rely on mechanized systems or lack advanced electronic systems.^{52/}

M. "Avoided Costs" Should Not Be Marked Up To Include An Allocation Of Shared Costs Nor Should Profits On Resold Services Be Reduced. LECC has explained in detail that "avoided costs" should not be marked up to include an allocation of shared costs or a portion of profits.^{53/} Although this request has been opposed,^{54/} LECC's proposed changes should be adopted. Time Warner, consistent with the LECC petition, has analyzed direct and indirect expense accounts and shown that substantial portions of such accounts should not be presumed to be avoidable.^{55/} It is not enough to argue, as CompTel does, that states have flexibility to conduct individualized analyses of wholesale costs and rates.^{56/} Assuming arguendo that the Commission has jurisdiction to make rules in this area, the First Order's current findings do not recognize the relationships between shared

^{51/} See, e.g., MCI Opposition at 20; First Order at para. 421.

^{52/} See LECC Petition at 25.

^{53/} See LECC Petition at 25-26.

^{54/} See, e.g., CompTel Opposition at 5-7.

^{55/} See Time Warner Petition at 7-17.

^{56/} See CompTel Opposition at 6.

costs, profits, and the "avoided cost" standard. LECC asks that the Commission take these relationships into account in modifying the First Order as requested in LECC's petition.

N. Directory Assistance Service And Operator Services Should Not Be Considered Network Elements Subject To The Requirements of Section 251(c). Some parties argue, contrary to the LECC petition, that directory assistance service and operator services ("DAS/OS") should be considered network elements.^{57/} These contentions are based on overly broad readings of the definition of network elements that fail to acknowledge the distinction between "network elements" and "services."^{58/} As noted in the LECC petition, DAS/OS do not appear in the list of examples of network elements that appear in the definition of that term in Section 3(45) of the 1996 Act. However, they do appear in the dialing parity requirements of Section 251(b)(3), indicating that Congress considered DAS/OS to be services associated with dialing parity, rather than network elements.

O. Further Unbundling Of The SMS/800 Database Is Unnecessary. Some parties ask the Commission to ignore LECC's request that the Commission clarify that the national SMS/800 database is not subject to further unbundling.^{59/} The First Order concluded generally that incumbent LECs must provide nondiscriminatory access on an unbundled basis to their call-related databases.^{60/} However, the Commission also distinguished the national SMS/800 database as already being available under tariff.^{61/}

^{57/} See Comcast/Vanguard Opposition at 13; MCI Opposition at 14.

^{58/} See LECC Petition at 28, citing First Order at paras. 260, 264.

^{59/} See, e.g., MCI Opposition at 15.

^{60/} See First Order at para. 484.

^{61/} See First Order at para. 469.

P. Incumbent LECs Should Be Informed If Advanced Loop Technologies Are Deployed on Analog Loops. In its opposition, MFS argues that "incumbent LEC[s] should not have unfettered discretion to demand information about how the requesting carrier intends to make use of unbundled loops," but rather "should be able to require such information only where reasonably required to prevent network harm, such as electromagnetic interference between loops."^{62/} LECC questions whether MFS actually read LECC's petition on this point.

In fact, LECC seeks clarification for a limited purpose: to prevent interference or other technical problems. For this reason, requesting carriers should specify the types of technologies that they intend to deploy on the unbundled local loop elements.^{63/} LECC cites technical reasons in its petition for this finding similar to those raised by MFS. The views of MFS apparently do not conflict with those of LECC that justify the requested clarification. Accordingly, MFS' "opposition" on this point should be disregarded.

Q. Implementation of the First Order's Branding and Customized Routing Obligations Is Technically Infeasible. Several parties urge denial of LECC's request to remove the First Order's rebuttable presumption that failure to comply with rebranding and customized routing requests is an unreasonable restriction on resale.^{64/} These parties insist that rebranding and customized routing are technically feasible and that any failure of

^{62/} MFS Opposition at 5, citing LECC Petition at 34-35.

^{63/} See LECC Petition at 34-35.

^{64/} See, e.g., TRA Opposition at 15; AT&T Opposition at 6; MCI Opposition at 30.

an incumbent LEC to provide such services on demand amounts to unreasonable delaying tactics.^{65/}

In fact, current technology does not provide a generally available, technically feasible method for incumbent LECs to provide these services.^{66/} As LECC demonstrated in its petition,^{67/} the Commission itself has recognized the pervasive technical limitations associated with rebranding and customized routing.^{68/} The current state of technology and the record do not support a presumption of unreasonableness. The Commission should build on its assessment of these factors and reconsider its finding as discussed in the LECC petition.

R. Policies Regarding Pole Attachments And Conduits Should Be Conformed To The Statute. The Commission should refrain from requiring incumbent LECs (or other utilities) to exercise their powers of eminent domain on behalf of third parties. Contrary to the assertions of some, Section 224(f) does not require a utility or incumbent LEC to institute an eminent domain proceeding to accommodate requests by third parties. These parties

^{65/} See TRA Opposition at 16.

^{66/} AT&T claims that rebranding is technically feasible, as evidenced by SWBT's agreement to rebrand directory assistance and operator services calls beginning March 1, 1997. AT&T Opposition at 6. This apparent ability of SWBT to comply with AT&T's rebranding requests should not be imputed to the members of LECC. Many of the incumbent LECs that make up the Coalition may not possess the equipment and software used by SWBT; indeed, it is not clear that other LECs could enter at this time an agreement such as the one between AT&T and SWBT.

^{67/} See LECC Petition at 20-21.

^{68/} See First Order at para. 418.

strain the 1996 Act by hanging their preferred outcome on a tortured reading of "nondiscriminatory access."^{62/}

The First Order's requirements may also violate state law. AT&T concedes that in some instances, the Commission's regulations will conflict with state restrictions on the ability of incumbent LECs and utilities to exercise eminent domain authority.^{70/} There is no need for the Commission to preempt the states because new entrants can address this issue in the same way as incumbent LECs: by negotiating with property owners. In many states, new entrants will have the same access to rights-of-way as incumbent LECs when they are certified by the applicable state commission.

S. LECS Should Not Be Required To Alter Their Fundamental Network Technologies Through Requests For Interconnection. LECC requests clarification that "technical feasibility" for purposes of Sections 251(c)(2) and 251(c)(3) should not mean that incumbent LECs must satisfy requests that would require major changes to the existing technologies deployed in their networks.^{71/} The Commission should focus on existing network components and technologies so as to lower barriers to competitive entry in a rational and consistent fashion. This focus is consistent with the 1996 Act's purpose of promoting competition, not specific competitors.

Some parties seek to turn this common sense approach on its head. MCI, for example, argues that incumbent LECs must offer interconnection or access to non-existent

^{62/} See AT&T Opposition at 35-36; MCI Opposition at 38; NCTA Opposition at 26-27.

^{70/} AT&T Opposition at 35.

^{71/} See LECC Petition at 29-30.